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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 43/2018 concerning Ahmet Caliskan (Turkey)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 20 March 2018 the Working Group transmitted to the Government of Turkey a communication concerning Ahmet Caliskan. The Government replied to the communication on 17 May 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Ahmet Caliskan, born in 1976, is a Turkish national usually resident in Izmir, Turkey. He used to work as an Associate Professor of Economics, at Gediz University in Izmir. According to the source, the university is now closed.

(a) Arrest and detention

5. The source reports that Mr. Caliskan was arrested on 26 August 2016 at his place of usual residence by the Turkish police. Three police officers entered Mr. Caliskan's residence saying that they had a search warrant, and seized his laptop, tablet computer, mobile telephone and an old SIM card. No arrest warrant or other decision by a public authority was presented to Mr. Caliskan or his family members at the moment of arrest. The police told them that the arrest was related to membership of an armed terrorist organization through Gediz University, where Mr. Caliskan used to work as a professor. The officers did not mention on what basis the arrest took place, but said that the case was related to the Fethullah Terrorist Organization/Parallel State Structure.

6. According to the source, Mr. Caliskan was handcuffed and immediately taken to the police station, i.e. the Yeşilyurt Service Facility in the Izmir Police Department. Mr. Caliskan was questioned by the police, but no lawyer was present during the questioning. During the entire time that he was detained at the police station, he was not allowed contact with any family members. He was kept without any information as to why he had been arrested.

7. The source reports that Mr. Caliskan remained in police custody until 31 August 2016. On that day, he was brought before a judge at the Izmir 13th High Criminal Court and was placed in detention, without any evidence being presented against him or any grounds for keeping him detained. The source reports that the Court based its decision to place him in detention on the existence of a strong suspicion regarding his being a member of an armed terrorist organization, the need to identify the organization's members and their activities and to try them on the grounds of national security, the suspicion that he might try to evade justice and the fact that not all the evidence had been collected.

8. According to the source, the detention decision (dated 31 August 2016 and numbered 2016/383) in relation to Mr. Caliskan is based on articles 5 and 7 of the Law on the Fight Against Terrorism (Law No. 3713), which reference articles 37 (1), 53 (1)–(2), 54, 58 (9), 63 and 314 (2) of the Turkish Penal Code (Law No. 5237).

9. Mr. Caliskan was subsequently transferred to Menemen 1st T-Type Punishment Execution Facility. After a while, he was transferred to another prison, Izmir 2nd T-Type Closed Punishment Execution Facility, where he was detained at the time of the submission by the source.

10. According to the source, Mr. Caliskan's arrest took place in an environment in which the rule of law had deteriorated and human rights were openly violated. The source notes that as thousands of lawyers had just been sent to jail for being a suspected member of the Fethullah Terrorist Organization — or defending an accused member — following the "coup attempt" in July 2016, other lawyers reportedly declined to work for individuals accused of being members. It therefore took three full days for Mr. Caliskan's family members to find and convince a private lawyer to work for him.

11. The source reports that Mr. Caliskan was presented with a number of allegations and questions, but no evidence directly against him. All of the evidence referenced by the authorities was circumstantial, while some was factually incorrect.

12. He was accused of being in the hierarchy of the terrorist organization owing to:

(a) Having a bank account at Bank Asya;

(b) Working for a university that was allegedly affiliated to the Hizmet movement;

(c) The testimony of a witness whose identity was not revealed.

13. At a later stage in the court proceedings, the prosecutor also accused Mr. Caliskan of:

(a) Having digital cookies of certain news websites in the temporary folder of his laptop. According to the source, the cookies of those websites were presumably automatically copied while Mr. Caliskan was surfing on the Internet;

(b) Having attended a high school that was allegedly affiliated to the Hizmet movement (that is, when Mr. Caliskan was between 13 and 16 years old).

14. According to the testimony of the secret witness:

(a) Mr. Caliskan worked as an Assistant Professor at Gediz University. According to the source, this is factually incorrect as Mr. Caliskan started working at Gediz University as Associate Professor in 2015;

(b) Mr. Caliskan was actively working for the organization and attending social gatherings;

(c) Mr. Caliskan was reporting to the Dean of Economics and Administrative Sciences.

15. According to the source, Mr. Caliskan's ability to pursue domestic remedies with legal and administrative authorities has been limited by significant restrictions on his access to justice. Mr. Caliskan has brought numerous actions before domestic courts since his arrest and detention, but they have all proved unfruitful.

16. Mr. Caliskan attended his first court hearing on 25 May 2017, during which he was not given the opportunity to complete his defence, and his second hearing on 10 October 2017, when the judge extended his detention for another four months. According to the source, the alleged arbitrary detention of Mr. Caliskan for more than 18 months has taken a toll on his health, and his family members.

(b) Legal analysis

17. The source submits that the detention of Mr. Caliskan violates the fundamental guarantees of human rights enshrined in international human rights treaties and customary law and constitutes a violation of categories I, II, III and V.

(i) Category I — absence of legal basis justifying the deprivation of liberty

18. At the outset, the source notes that any deprivation of liberty must be compatible with the substantive and procedural domestic laws, and that failure to comply with domestic law entails a breach of article 9 (1) of the International Covenant on Civil and Political Rights.

19. According to the source, the Government has outlined a number of actions as pretexts for the arrest and detention of alleged members of the Hizmet movement, although they are not defined as crimes in law. These include: having a subscription to the Hizmet-affiliated *Zaman* newspaper, journal or magazine; being a client of Bank Asya; being a member of a union; volunteering for the charity organization Kimse Yok Mu; being in possession of books or other materials by Fethullah Gülen; possessing one-dollar bills; and using encrypted software (ByLock).

20. While outlining domestic legislation, the source submits that, in the present case, Mr. Caliskan was arrested contrary to article 91 (2) of the Turkish Criminal Procedure Code without reasonable suspicion of a crime. He was detained without solid evidence to suggest strong criminal suspicion, and the justification for his detention was not given, contrary to articles 100 and 101 of the Code. As stated above, all the allegations against Mr. Caliskan were reportedly legal activities and rights that are protected under the Covenant.

21. In addition, the arrest and detention warrant reportedly did not include any concrete facts or findings to justify detention (suspicion of an intention to escape and risk of tampering with evidence) or show why judicial control would be insufficient. The source

reports that the decision to detain Mr. Caliskan was based on various suppositions, although there are mandatory provisions in the Criminal Procedure Code that state that a person cannot be detained unless there are hard facts to suggest that judicial control would be insufficient. The source thus submits that Mr. Caliskan was detained in direct violation of articles 100 and 101 of the Criminal Procedure Code and in breach of article 9 (1) of the Covenant.

22. According to the source, an examination of all the decisions to detain and to continue to detain Mr. Caliskan show that they fail to fulfil the basic requirements stated in domestic law. They are reportedly unsatisfactory and irrelevant, and thus fail to justify his detention. None of the allegations against him constitute a criminal act. For example, the following acts of Mr. Caliskan were all depicted as criminal acts and as contributing to an organized terrorist activity: (a) working for a university that was legally established; (b) being paid through a bank account that belongs to a legally established bank; (c) reporting to his own dean; (d) joining some social gatherings; (e) studying in a legally established high school between the ages of 13 and 16 years; and (f) visiting some websites.

23. Moreover, according to the source, the authorities must speedily complete their investigations into the suspects, most of whom are detained, and prepare indictments, yet they did not act as responsibly as they should have in the cases of the suspects who were arrested and detained after July 2016. The detention periods thus became unreasonably long, and the authorities did not prepare the indictments in a speedy manner. In the present case, Mr. Caliskan was held in detention for several months before he received the official charges as cited above. The source recalls that Mr. Caliskan had nothing to do with the coup attempt. Considering the allegations and the nature of the evidence produced, there was nothing to justify an extension of his detention period, in violation of article 9 of the Covenant.

24. In the light of the foregoing, the source submits that the arrest and detention of Mr. Caliskan are not compatible with substantive domestic law and are against the basic principles of law. There is no legal basis for his arrest and detention, which therefore fall within category I and are in violation of the Turkish Constitution and penal law, and article 9 of the Universal Declaration of Human Rights and of the Covenant.

(ii) Category II — deprivation of liberty resulting from the exercise of fundamental human rights

25. The source submits that all accusations against Mr. Caliskan constitute legal activities that fall within fundamental human rights and are protected under articles 18, 19, 21, 22, 25, 26 and 27 of the Covenant.

26. Mr. Caliskan was accused of working for an allegedly Hizmet-affiliated institution. In this respect, the source indicates that, after the coup attempt of 15 July 2016, all the institutions related to the Hizmet movement, including hospitals, schools and universities (including Gediz University, where Mr. Caliskan was working), were shut down on 23 July 2016 in accordance with Decree Law No. 667. Accordingly, before that day, they were officially registered, duly authorized and entirely legitimate.

27. Mr. Caliskan was accused of having a bank account at Bank Asya. The source indicates that Bank Asya was a legal cooperative, which started its business on 24 October 1996 in Istanbul. It was expropriated by the Government on 29 May 2015 and closed down on 22 July 2016.

28. With regard to the accusation against Mr. Caliskan for having participated in social gatherings and other social activities, the source notes that mere participation in such gatherings or activities, without promoting terrorism or violence, cannot be banned.

29. In addition, Mr. Caliskan was accused of being a student in an allegedly Hizmet-affiliated educational institution. In this respect, the source reiterates that, after the coup attempt, all associations, unions, foundations and institutions that were allegedly related to the Hizmet movement were shut down on 23 July 2016 in accordance with Decree Law No. 667. Accordingly, before that day, they were officially registered, duly authorized and entirely legitimate.

(iii) Category III — non-observance of international fair trial norms

30. The source submits that Mr. Caliskan suffered serious violations of his right to a fair trial under article 14 of the Covenant. The Government of Turkey has allegedly committed grave violations of numerous procedural requirements under both international and domestic law.

31. The source asserts that the Government has failed to provide Mr. Caliskan with an independent and impartial tribunal. In this respect, the source underlines that the motivation for the creation of the Special Courts (i.e. the Courts of Criminal Judgeships of Peace) was to fight against the opposition, especially the Hizmet movement. These judges are reportedly exclusively authorized to carry out all investigatory processes, including arrests, detention, property seizures and search warrants. They have allegedly been introduced to persecute members of the Hizmet movement who are treated as opponents of the Government. As an appeal against a decision by such a judge can only be filed with another such judge, this reportedly creates a "closed circuit" system. So far, all detentions have been carried out by these courts and judges, including in the present case. The source also indicates that arrest warrants for 2,745 judges and prosecutors were issued in one single day, 16 July 2016, following the attempted coup. At the time of the submission by the source, reportedly 2,575 judges and prosecutors had been detained.

32. With regard to the right to defence, the source indicates that there has been a relentless campaign of arrests that has targeted lawyers across the country. In 77 of the 81 provinces in Turkey, lawyers have allegedly been detained and arrested on trumped-up charges as part of the criminal investigations orchestrated by the political authorities and conducted by provincial public prosecutors. At the time of the submission by the source, 523 lawyers had been arrested and 1,318 were facing prosecution.

33. The source thus submits that, while defending their clients, who are accused of similar accusations to those against Mr. Caliskan, lawyers are left with very little room to build their defence outside of the Government's narrative. According to the source, it is reasonable to think that lawyers avoid speaking out against certain violations of rights as they themselves are concerned about being accused of similar unlawful accusations. This also diminishes the power of defence even further below the standards of the Covenants.

(iv) Category V — for reasons of discrimination

34. The source submits that Mr. Caliskan's continued detention, owing to his social background, is discriminatory in nature and therefore arbitrary.

35. According to the source, individuals who are accused of being members of the Fethullah Terrorist Organization face widespread discrimination. There is allegedly an emerging pattern involving the arbitrary deprivation of liberty of persons who are accused of being followers of Fethullah Gülen in Turkey; it is not important whether they accept or reject the connection with the Hizmet movement. Mr. Caliskan has reportedly been arbitrarily deprived of his liberty according to category V due to discrimination against him as a sympathizer of the Hizmet movement. The source adds that the arrest and detention of more than 150,000 individuals have been motivated solely by their social background and political stance.

Response from the Government

36. On 20 March 2018, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 22 May 2018, detailed information about the current situation of Mr. Caliskan and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Turkey under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Turkey to ensure his physical and mental integrity.

37. In its reply of 17 May 2018, the Government underlined the terrorism threats faced by Turkey, the grave nature of the coup attempt of 15 July 2016 and the measures taken.

For reference, the Government submitted background information with regard to the Fethullah Terrorist Organization/Parallel State Structure, as well as the measures taken against it, along with other terrorist organizations.[1]

Circumstances of the case

38. In relation to the present case, the Government notes that, according to Decision No. 2016/3031 of the 4th Chamber of the Izmir Police Court, the police searched the residence of Mr. Caliskan and presented him with a search warrant prior to the search. In addition, the police custody form dated 26 August 2016, signed by Mr. Caliskan, contains information on the legal reasons for his detention and his rights to challenge the decision.

39. Under Turkish law, suspects arrested or detained in custody, including Mr. Caliskan, have the right to be informed of the charges against them and their rights, remain silent, receive legal assistance, communicate with their family, provide evidence in their favour and ask for evidence to be collected, be brought before a court and see a doctor.

40. According to the Government, Mr. Caliskan was taken into custody on 26 August 2016 following the investigation of the Office of the Prosecutor General for "belonging to the armed terrorist group" in accordance with article 314 of the Penal Code. At the time of his detention, the authorities informed him of the offence for which he was held in custody, the charges against him, and his rights to remain silent, receive legal assistance, communicate with his family and see a doctor.

41. In accordance with article 91 of the Criminal Procedure Code, detainees, the accused or their legal representatives, spouses or blood relatives of the first or second degree may apply to the magistrates to challenge any decision relating to custody or its extension. This legislation, which is in conformity with international human rights treaties, was strictly enforced in the case of Mr. Caliskan.

42. Mr. Caliskan was granted the right to communicate with his family when he was taken into custody. He signed the form relating to communication with the family himself. In addition, at the time the custody was extended, he signed the form that indicated that he and his relatives had been informed of such an extension. In addition, Mr. Caliskan was interviewed on 31 August 2016 in the presence of his lawyer (a member of the Istanbul Bar).

43. In relation to the allegation by the source that the decision to detain Mr. Caliskan was delivered by the 13th Chamber of the Izmir Court of Assize without any evidence against him, the Government notes that the decision to detain was not taken by the 13th Chamber of the Izmir Court of Assize but by the 4th Chamber of the Izmir Police Court, which in its reasoning took into account the "state of the evidence", the existence of facts proving the accused's affiliation to a terrorist organization and a strong suspicion that an offence had been committed and that the accused might seek to evade justice.

44. The decision to detain Mr. Caliskan was reviewed by the 13th Chamber of the Izmir Court of Assize in its decisions of 7 April 2017, 5 May 2017, 21 June 2017, 19 July 2017, 16 August 2017, 15 September 2017, 8 November 2017, 6 December 2017, 27 December 2017 and 24 January 2018. The Court renewed the detention of the accused on the grounds that, based on the information and documents on file, it was understood that there was a strong suspicion that an offence had been committed and the accused might seek to evade justice, taking into account the nature and characterization of the alleged offence and the level of penalties provided for such an offence.

45. In fact, the Izmir Prosecutor General's Office, in its requisitions Nos. 2017/22243 and 2017/7113, through which a public action had been filed, gave detailed information on the organization of the Fethullah terrorist and criminal group and on Mr. Caliskan. In particular, it said that the Fethullah Terrorist Organization/Parallel State Structure had organized the attempted coup d'état of 15 July 2016 by infiltrating the Turkish Army, that it

[1] For the full background information, see e.g. opinions No. 44/2018, paras. 42–49, and No. 38/2017, paras. 22–30.

gave paramount importance to the universities that it used to infiltrate the Turkish Army, the police, the judiciary, that it aimed, by expanding in the universities, to dominate the political framework of the country and that, following the orders of Fethullah Gülen, its leader, it had gained a foothold in the universities of the country.

46. The Attorney General of Izmir also stated that, given the witness statements and the inspection report of the Council of Higher Education and taking into account the function and powers that Mr. Caliskan held within the university and the way in which he exercised those powers, he was a member of the terrorist organization's hierarchy and that he received orders from his superiors within the organization.

47. The 13th Chamber of the Izmir Court of Assize accepted the indictment of the Izmir Prosecutor General dated 13 March 2017, following judgment No. 2017/210. Hearings were subsequently held on 25 May 2017, 10 October 2017 and 12 February 2018. At the last of those hearings, the Court ruled that the offence of belonging to an armed terrorist organization had been proven and sentenced Mr. Caliskan to nine years' imprisonment with the possibility of appeal. The Court also decided on the same day that he would be released on parole in view of the length of his detention and the ban on leaving the country. The decision to convict Mr. Caliskan is still not final.

48. The Court concluded that it could not apply the minimum sentence possible in relation to Mr. Caliskan. Given that the danger posed by Mr. Caliskan was considerable since he was a significant and long-time member of the terrorist organization (he had been nominated and subsequently rotated within the organization) and that he was an academic with the title of senior lecturer, and because his intent was resolute, it would be neither fair nor consistent to consider his sentence at the same level and under the same conditions as an ordinary member. Finally, having found that the accused had not shown any sign of remorse for the offence that he had committed, the Court decided not to consider any grounds for discretionary mitigation, as provided for in article 62 of the Penal Code.

49. The Government reiterates that the 13th Chamber of the Izmir Court of Assize based its decision on factual data, witness statements and 111 documents of the organization. Consequently, the allegations that the Court made its decision without any evidence are unfounded and must be rejected.

50. The Government notes the allegation put forward by the source that the deprivation of liberty of Mr. Caliskan was not in accordance with domestic law and was unlawful because he was arrested and detained without strong evidence, and that the decision on which his detention was based did not contain any concrete findings to justify a risk of leaking or tampering with the evidence. In this respect and with reference to article 91 (2) of the Criminal Procedure Code, the Government states that, in view of the factual evidence of Mr. Caliskan's membership of the Fethullah Terrorist Organization/Parallel State Structure, the evidence found at his home and his status in the organization, there was a lot of concrete evidence of his having committed the crime of belonging to a terrorist organization. This was confirmed by the decision of the 13th Chamber of the Izmir Court of Assize. Given his position in the organization and the actions of fellow members in the same situation who were destroying or attempting to destroy systematically the evidence, his detention was also necessary for the proper conduct of the investigation.

51. The Government underlines that, in view of the information provided by the authorities, it is clear that Mr. Caliskan has seized the Working Group without having pursued his right to apply to the Turkish courts and exhausted existing and effective remedies in Turkey.

52. The Government refers to a number of effective legal remedies available in Turkey to annul or rectify any judicial or administrative decisions that have or may violate the rights of persons within its territory. These include articles 91 (5) and 141 of the Criminal Procedure Code, the Law on Administrative Procedure No. 2577, as well as article 48 of the Constitution, following its amendment in 2010.

53. In conclusion, the Government considers that Turkey has acted in accordance with its domestic legislation and the international human rights treaties to which it is a party.

Further comments from the source

54. The response of the Government was sent to the source for further comments. In its response of 6 June 2018, the source confirms that Mr. Caliskan was sentenced to nine years' imprisonment on 12 February 2018 but was released from prison, pending appeal to the Izmir Regional Court of Appeal. He is prohibited from travelling abroad, but there are no other reporting obligations imposed on him.

55. In response to the claim of the Government that an arrest warrant was shown to Mr. Caliskan on 26 August 2016, the source notes that a document was indeed shown to Mr. Caliskan but he assumed that it was a search warrant as the officers videotaped his belongings and seized a laptop, a tablet computer and his mobile telephone. At the time, however, the source reiterates that Mr. Caliskan was not told that there was an arrest warrant in his name. The source also reiterates that Mr. Caliskan was not informed of any charges against him, nor of what his legal rights were or where he could contest his arrest. He was told to prepare a backpack for a few days away before being taken to Yeşilyurt Police Station.

56. In relation to the allegation by the Government that he had signed a document that indicated the charges against him, the source submits that neither Mr. Caliskan nor his wife recall signing any documents but should that have happened, they would have been of the opinion that that was in relation to the search warrant and items seized during the search as Mr. Caliskan was not informed of having been arrested until after the search, at the very last moment. The source reiterates that Mr. Caliskan was unaware of any charges against him until 31 August 2016.

57. The source further objects to the submission by the Government that Mr. Caliskan had been able to communicate with his family and lawyer during his detention between 26 and 31 August 2016. The source reiterates that this was not possible and rejects the submission that Mr. Caliskan signed any documents, such as "the form of communication with the family". The source submits that the first time Mr. Caliskan met his lawyer was when the police took him upstairs for questioning on 31 August 2016 when he had the chance to talk to his lawyer for one or two minutes before the police questioned him. He was unable to communicate with his family until at least 7 September 2016.

58. The source further submits that, in March 2017, the 13th Chamber of the Izmir Court of Assize accepted the Prosecutor's indictment and ordered the first hearing to be held on 25 May 2017. Mr. Caliskan was unaware of the details of any charges against him and the supporting evidence due to a "secrecy order". The only thing that he and his lawyer knew during those nine months that passed between his arrest and the first hearing was that he had been charged with membership of the Fethullah Terrorist Organization/Parallel State Structure, but they were unaware of the legal basis of the charges. When the file was later released to them, the only parts in the indictment that were related to Mr. Caliskan were: (a) the two-line statement of a secret witness; and (b) the fact that he had worked at Gediz and Fatih Universities in the past.

59. The source also argues that, at the hearing on 25 May 2017, the 13th Chamber of the Izmir Court of Assize ordered the extension of Mr. Caliskan's detention based on the nature and type of the alleged crime, the current state of evidence, the fact that the evidence had not yet been fully collected and the probable sentence. The second hearing was to be held on 10 October 2017, however, on that date, the Court, based on similar reasoning, ordered the extension of his detention until 12 February 2018 when he was sentenced.

60. The source rejects the allegations against Mr. Caliskan and reiterates that all the actions cited by the Government as criminal offences committed by him are in fact ordinary actions. For example, he attended a fully legitimate high school as a 15-year-old and was *certainly unaware of any coup plans* some 25 years later; his doctoral studies in the United States were conducted legally and he did not engage in any illegal activity while there; his work at the university was normal professional activity in an educational institution that was operating legally in the country; he maintained a bank account with Bank Asya, not because of his own choosing, but because this was the bank that the university chose and opened for him to pay his salary into.

61. Finally, the source rejects the submission made by the Government concerning the non-exhaustion of domestic remedies, arguing that there is no such requirement prior to submission of a communication to the Working Group.

Discussion

62. The Working Group thanks the source and the Government for their submissions. It appreciates the cooperation and engagement of both parties in this matter.

63. At the outset, the Working Group would like to stress that the procedural rules to handle communications from sources and the responses of Governments are contained in its methods of work (A/HRC/36/38) and in no other international instrument that the parties might consider applicable. In that regard, the Working Group would like to clarify that, in its methods of work, there is no rule that impedes the consideration of communications due to non-exhaustion of domestic remedies. Sources thus have no obligation to exhaust domestic remedies before submitting a communication to the Working Group.[2]

64. A further preliminary issue for the Working Group is whether Mr. Caliskan is currently deprived of his liberty, noting that he was sentenced to nine years' imprisonment on 12 February 2018, but was released from prison, pending appeal to the Izmir Regional Court of Appeal. He is prohibited from travelling abroad, but no other reporting obligations have been imposed on him.

65. As the Working Group has stated, deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave a place of detention, then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected (A/HRC/36/37, para. 56). Moreover, in its jurisprudence, the Working Group maintains that house arrest amounts to a deprivation of liberty provided that it is carried out in closed premises that the person is not allowed to leave.[3] In determining whether this is the case, the Working Group considers whether there are limitations on the person's physical movements, on receiving visits from others and on various means of communication, as well as the level of security around the place in which the person is allegedly detained.[4]

66. The Working Group notes that there is a travel ban imposed upon Mr. Caliskan, but that there are no other reporting obligations imposed. However, this is only a temporary measure as Mr. Caliskan was indeed sentenced to nine years' imprisonment. Should his appeal be denied, the Working Group presumes that he will be imprisoned. Therefore, given the sentence imposed upon him and the continuing proceedings, and noting paragraph 17 (a) of it methods of work, the Working Group shall proceed to examine the case.

67. As a further preliminary issue, the Working Group notes that the Government of Turkey argues that the situation of Mr. Caliskan falls within the scope of the derogations that it has made under the Covenant. On 21 July 2016, the Government informed the Secretary-General that it had declared a state of emergency for three months, in response to the severe dangers to public security and order, amounting to a threat to the life of the nation within the meaning of article 4 of the Covenant. The Government stated that the measures taken might involve derogation from its obligations under articles 2 (3), 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27 of the Covenant.[5]

68. While acknowledging the notification of those derogations, the Working Group emphasizes that, in the discharge of its mandate, it is also empowered, under paragraph 7 of

[2] See also opinions No. 44/2018, No. 42/2018, No. 11/2018, No. 8/2018, No. 38/2017, No. 19/2013 and No. 11/2000.

[3] See e.g. opinions No. 37/2018 and No. 13/2007, and E/CN.4/1993/24, deliberation No. 1 on house arrest, para. 20.

[4] See e.g. opinion No. 16/2011, para. 7. See also opinions No. 39/2013, No. 30/2012, No. 12/2010, No. 47/2006, No. 18/2005, No. 11/2005, No. 11/2001, No. 4/2001, No. 41/1993 and No. 21/1992.

[5] See depositary notification C.N.580.2016.TREATIES-IV.4 of 11 August 2016 (notification under article 4 (3), Turkey), available at https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf.

its methods of work, to refer to the relevant international standards set forth in the Universal Declaration of Human Rights and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are most relevant to the case of Mr. Caliskan. As the Human Rights Committee has stated in its general comments No. 35 (2014) on liberty and security of person and No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.

69. The source has submitted that the detention of Mr. Caliskan is arbitrary and falls under categories I, II, III and V of the Working Group, while the Government denies these allegations. The Working Group shall proceed to examine each of these categories in turn.

70. The Working Group recalls that it considers a detention to be arbitrary and falling under category I if such detention lacks a legal basis. In the present case, the Working Group must therefore examine the circumstances of Mr. Caliskan's arrest. To this end, the Working Group notes that he was arrested on 26 August 2016. The Working Group also notes the dispute between the source and the Government as to whether Mr. Caliskan was in fact shown an arrest warrant at the time. While the Government argues that this did occur, noting that on 26 August 2016 Mr. Caliskan signed a police custody form, which indicated the reasons for his detention and his right to challenge the detention, the source denies this.

71. In determining whether Mr. Caliskan's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

72. In the present case, the Government should have been in possession of the documents that Mr. Caliskan had allegedly signed, yet it has failed to produce them. On that basis, the Working Group must conclude that the arrest warrant was not shown to Mr. Caliskan at the time of his arrest, nor was he duly informed of the reasons for his arrest on 26 August 2016.

73. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for his or her arrest at the time but also promptly informed of any charges against him or her. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in its general comment No. 35 (para. 29), this right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.

74. The Working Group observes that five days elapsed between Mr. Caliskan's arrest and when he was notified of the reasons for his arrest on 31 August 2016. In other words, the Turkish authorities failed to formally invoke any legal basis justifying the detention of Mr. Caliskan when he was arrested on 26 August 2016. As the Working Group has previously stated, in order for deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant (see e.g. opinions No. 75/2017, No. 66/2017 and No. 46/2017). The Working Group therefore concludes that there has been a breach of article 9 (2) of the Covenant in the present case.

75. Furthermore, in order to establish that detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to

challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.[6] This right, which is in fact a peremptory norm of international law,[7] applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.[8] Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.[9]

76. The Working Group notes that, in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing as stipulated in the United Nations Basic Principles and Guidelines.[10] This was denied to Mr. Caliskan for the first five days of his detention since, by the Government's own admission, his lawyer was present for the first time during his questioning on 31 August 2016. This seriously and adversely impacted his ability to effectively exercise his right to challenge the legality of his detention, denying him rights under article 9 (4) of the Covenant.

77. The Working Group therefore concludes that, since the detention of Mr. Caliskan took place without presenting him with an arrest warrant, since no charges were brought against him for five days and since he was effectively prevented from exercising his right to challenge the legality of detention, his arrest and detention are arbitrary, falling under category I.

78. The source has further argued that the detention of Mr. Caliskan falls under category II as he was arrested for the exercise of his legitimate rights, including working at a university, participating in the social gatherings of a legal organization and having a bank account. The Government contests this, arguing that all these activities were in fact linked to the activities of the Fethullah Terrorist Organization/Parallel State Structure of which Mr. Caliskan was a member.

79. In the present case, the Working Group observes that at the core of the allegations against Mr. Caliskan is his alleged alliance with the Gülen group, which is said to have manifested itself through his attending a high school affiliated with the group, then travelling to study in the United States for his doctorate, a path allegedly often chosen by the members of the group, then working in a university allegedly associated with the Gülen group and by depositing money in the Bank Asya, which was also affiliated with the group. However, the Working Group notes that the Government has done nothing more than simply state that all those activities were criminal actions without explaining how such everyday actions as attending high school, travelling abroad for studies or working in a legitimate, government-recognized university constitute a criminal activity. The Government has also failed to respond to the submission made by the source that Mr. Caliskan's bank account was in fact opened by the university and used by that institution to pay his salary.

80. The Government has also claimed that more than 100 documents were seized, showing Mr. Caliskan's links with the organization. Yet, the Government has provided no details of the contents of these documents or what exactly was deduced by officials from their content.

81. The Working Group is mindful of the state of emergency that was declared in Turkey. However, while the National Security Council of Turkey had already designated

[6] A/HRC/30/37, paras. 2–3.
[7] Ibid., para. 11.
[8] Ibid., para. 47 (a).
[9] Ibid., para. 47 (b).
[10] Ibid., annex, principle 9.

the Fethullah Terrorist Organization/Parallel State Structure, the Gülen group, as a terrorist organization in 2015, the fact that this organization was ready to use violence had not become apparent to Turkish society at large until the coup attempt in July 2016. In this respect, the Working Group refers to a memorandum by the Council of Europe Commissioner for Human Rights.[11] The Commissioner also pointed out that there was therefore a need, "when criminalising membership and support of this organisation, to distinguish between persons who engaged in illegal activities and those who were sympathisers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence".[12]

82. In the case of Mr. Caliskan, the Government, although it had the opportunity to do so, has failed to show any illegal actions in the conduct of Mr. Caliskan that could be construed as his being a supporter of a criminal organization. His attendance of the high school as a 15-year-old was a normal activity for a child at that age, his travelling abroad to study and subsequent employment at the university, as well as having a bank account, were regular activities that Mr. Caliskan was entitled to enjoy as everyone else, in accordance with article 26.

83. In relation to the seized documents, the Working Group recalls that freedom of opinion and freedom of expression, as provided for in article 19 of the Covenant, are indispensable conditions for the full development of the person and are essential for any society, and in fact constitute the foundation stone for every free and democratic society.[13] According to the Human Rights Committee, no derogations can be made to freedom of opinion since it can never become necessary to derogate from it during a state of emergency.[14]

84. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.[15] Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual as well as electronic and Internet-based modes of expression.[16]

85. The Working Group notes that the Government has yet again failed to explain how the seized documents have proved Mr. Caliskan's links with the criminal organization and criminal activities. On that basis, the Working Group is of the view that the possession of those documents was nothing more than a legitimate exercise of the freedom of expression as encapsulated in article 19 of the Covenant.

86. The Working Group thus concludes that the arrest and detention of Mr. Caliskan resulted from his exercise of the rights guaranteed by articles 19 and 26 of the Covenant, falling under category II.

87. Given its finding that the deprivation of liberty of Mr. Caliskan is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Caliskan should have taken place. However, the trial did take place and the source has submitted that there were severe violations of the fair trial rights of Mr. Caliskan and that his subsequent detention therefore falls under category III of the Working Group. The Government contests these allegations.

88. The source has submitted that the detention of Mr. Caliskan is arbitrary and falls under category III since he was not tried by an independent and impartial tribunal, given

[11] Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey (CommDH(2016)35) of 7 October 2016, para. 21. See also opinions No. 44/2018, No. 42/2018, No. 41/2017, No. 38/2017 and No. 1/2017.

[12] Council of Europe Commissioner for Human Rights, CommDH(2016)35, para. 21.

[13] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

[14] Ibid., para. 5.

[15] Ibid., para. 11.

[16] Ibid., para. 12.

that the Special Court that tried him was composed of judges exclusively authorized to carry out all investigatory processes, including arrests, detention, property seizures and search warrants, and that such judges had allegedly been introduced to persecute members of the Hizmet movement who are treated as opponents to the Government. The source further submits that Mr. Caliskan's right to defend himself was adversely impacted by the general climate in Turkey, which is characterized by mass arrests of lawyers, leaving the remaining lawyers with very little room to build a defence outside of the Government's narrative. According to the source, it is reasonable to think that lawyers avoid speaking out against some violations of rights as they themselves are concerned about being accused of similar unlawful accusations.

89. The Government has denied these allegations, noting that Mr. Caliskan has had a lawyer since 31 August 2016 who was always present during questioning and was able to represent him during the court hearings. The Government has not addressed the allegation about the independence and impartiality of the court that tried Mr. Caliskan.

90. The Working Group notes the allegation made by the source that the court examining the case of Mr. Caliskan lacked the requisite degree of independence. The Working Group recalls that the requirement of competence, independence and impartiality of a tribunal, in the sense of article 14 (1) of the Covenant, is an absolute right that is not subject to any exception.[17] As the Human Rights Committee observed, the requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges.[18] However, a situation in which the functions and competencies of the judiciary and the executive are not clearly distinguishable or in which the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.[19]

91. In the present case, the source has made no submissions in relation to the composition of the court or whether the executive is involved with the work of the Special Courts or the appointment of judges thereto. However, the source has argued that the Special Courts oversee both the investigative process, including the detention and arrest warrants, and try the suspects. In this regard, the Working Group is mindful of the report on the impact of the state of emergency on human rights in Turkey of the Office of the United Nations High Commissioner for Human Rights (OHCHR), in which a number of issues concerning the jurisdiction and practice of the Courts of Criminal Judgeships of Peace, established by Law No. 6545 in June 2014.[20]

92. Moreover, according to the same report, the decisions of Courts of Criminal Judgeships of Peace can only be appealed to another judgeship of peace.[21] In this respect, the Working Group takes note of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression who observed that the system of horizontal appeal falls short of international standards and deprives individuals of due process and fair trial guarantees (A/HRC/35/22/Add.3, para. 68).

93. The Working Group therefore concludes that the detention of Mr. Caliskan was authorized and his trial was undertaken by a court that lacked the requisite degree of impartiality and independence in breach of article 14 (1) and (5) of the Covenant.

94. In relation to the submission made by the source concerning the general atmosphere in which lawyers have to work in Turkey, the Working Group observes that the source has not made any specific allegations that this may have had an adverse impact on the ability of Mr. Caliskan's lawyer to work. However, the Working Group observes that the Government did not contest the submission made by the source that Mr. Caliskan and his lawyer were not given full access to the case file and that it also contained testimonies from secret witnesses.

[17] CCPR/C/GC/32, para. 19.

[18] Ibid.

[19] Ibid. See also *Olo Bahamonde v. Equatorial Guinea* (CCPR/C/49/D/468/1991), para. 9.4.

[20] OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January-December 2017" (March 2018), para. 52.

[21] Ibid., para. 53.

95. As the Working Group has stated, every individual deprived of his or her liberty has the right to access material related to the detention or presented to the court by the State in order to preserve the equality of arms, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply.[22] However, this right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.[23]

96. In the present case, the Government has presented no arguments as to why such a restriction on allowing Mr. Caliskan and his lawyer access to the case file was necessary and how it was proportionate in pursuing a legitimate aim, such as protecting national security. On that basis, the Working Group concludes that there has been a breach of article 14 (3) of the Covenant.

97. In addition, the Working Group also notes that the submissions made by the source in relation to the violations of fair trial rights in the case of Mr. Caliskan appear to follow closely a general pattern as evidenced by the Council of Europe Commissioner for Human Rights who noted that "the persons in question [those dismissed under the decrees that ordered dismissals] were not provided with evidence against them and were unable to defend themselves in an adversarial manner in many cases".[24] The Working Group also notes that OHCHR, in its above-mentioned report, corroborates the position of the Commissioner.[25]

98. The Working Group further notes the absence of a response from the Government in relation to the allegations made by the source concerning the denial to Mr. Caliskan of contact with his family. The Working Group therefore finds a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

99. The Working Group therefore concludes that there has been partial non-observance of the international norms relating to the right to a fair trial in the case of Mr. Caliskan as he was denied the right to be tried by an independent and impartial tribunal and both he and his lawyer were not given full access to the case file. This non-observance was of such gravity as to give his deprivation of liberty an arbitrary character (category III).

100. Finally, the source has submitted that the detention of Mr. Caliskan is arbitrary and falls also under category V as his detention and trial were due to his links with the Gülen group. The Government contests this, arguing that, while the detention and trial of Mr. Caliskan was indeed due to his affiliation with the Gülen group, this was not discriminatory as the group is a terrorist organization.

101. The Working Group notes that Mr. Caliskan himself had not previously been prosecuted due to his links with the Gülen group nor with any other religious organization. However, the Working Group is mindful of the large number of cases that are emerging before it in relation to Turkey.[26] The Working Group is also mindful of the pattern that these cases follow, which in turn corresponds to the pattern documented in the OHCHR report, as well as the one observed by the Council of Europe Commissioner.

102. The Working Group is aware that a large number of individuals were arrested following the attempted coup in July 2016. On 19 August 2016, the Working Group, in

[22] A/HRC/30/37, annex, principle 12 and guideline 13.

[23] Ibid., guideline 13, paras. 80–81.

[24] Council of Europe Commissioner for Human Rights, CommDH(2016)35, para. 24.

[25] OHCHR, "Report on the impact of the state of emergency on human rights in Turkey", para. 65.

[26] See opinions No. 44/2018, No. 42/2018, No. 41/2017, No. 38/2017 and No. 1/2017. See also the joint urgent appeal of 4 May 2018 on behalf of 13 individuals (UA TUR 7/2018), available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23766.

association with other United Nations human rights experts, sent a joint urgent appeal[27] and subsequently issued a press release on the same date.[28] The experts noted that, since the attempted coup on 15 July 2016, and in particular since the declaration of a state of emergency on 20 July 2016, Turkish society had seen an escalation of detentions and purges, in particular in the education, media, military and justice sectors. In addition, allegations of torture and poor detention conditions have been raised following the enactment of legislative provisions that enable wide and indiscriminate administrative powers affecting core human rights. The experts added that, while they understood the sense of crisis in Turkey, they urged the Government of Turkey to uphold its obligations under international human rights law, even during the current state of emergency.

103. The Working Group notes that the present case is but one of a number of cases concerning individuals with alleged links to the Gülen group that has come before it in the past 18 months.[29] In all these cases, the connection between the individuals concerned and the Gülen group has not been one of active membership and support of the group and its criminal activities, but rather, as described by the Council of Europe Commissioner for Human Rights, activities of "those who were sympathisers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence".[30] In all those cases, the Working Group has found the detention of the concerned individuals to be arbitrary and it thus appears that a pattern is emerging whereby those who have been linked with the group are being targeted despite never having been active members of the group or supporters of its criminal activities. The Working Group therefore considers that the detention of Mr. Caliskan was arbitrary since it constitutes discrimination on the basis of political or other opinion or status and falls under category V.

104. The Working Group wishes to reiterate the position of the Council of Europe Commissioner for Human Rights on the need for Turkey to urgently revert "to ordinary procedures and safeguards, by ending the state of emergency as soon as possible. Until then, the authorities should start rolling back the deviations from such procedures and safeguards as quickly as possible, through a nuanced, sector-by-sector and case-by-case approach."[31] The Working Group notes that this position is echoed in the recent OHCHR report.

105. The Working Group would welcome the opportunity to conduct a country visit to Turkey. Given that a significant period of time has passed since its last visit to Turkey, in October 2006, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group recalls that the Government of Turkey issued a standing invitation to all thematic special procedure mandate holders in March 2001, and looks forward to a positive response to its country visit requests of 15 November 2016 and 8 November 2017.

Disposition

106. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Ahmet Caliskan, being in contravention of articles 3, 9, 10, 19, 23 and 26 of the Universal Declaration of Human Rights and

[27] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3314.

[28] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20285&LangID=E. On 17 January 2018, the experts issued another press release in relation to the state of emergency, which is available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22592&LangID=E.

[29] See opinions No. 44/2018, No. 42/2018, No. 41/2017, No. 38/2017 and No. 1/2017. See also UA TUR 7/2018, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23766.

[30] Council of Europe Commissioner for Human Rights, CommDH(2016)35, para. 21.

[31] Ibid., para. 50.

articles 9, 14, 19, 24 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

107. The Working Group requests the Government of Turkey to take the steps necessary to remedy the situation of Mr. Caliskan without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

108. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Caliskan immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

109. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Caliskan and to take appropriate measures against those responsible for the violation of his rights.

110. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

111. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Caliskan has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Caliskan;

(c) Whether an investigation has been conducted into the violation of Mr. Caliskan's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Turkey with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

112. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

113. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

114. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[32]

[*Adopted on 21 August 2018*]

[32] See Human Rights Council resolution 33/30, paras. 3 and 7.